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Proceedings for the Issuance of City Bonds In California

JOHN YOUNGHUSBAND, the Pickle Manufacturing Corporation, and the City of Harmony, respectively desire to buy a lot and erect thereon a building. The cost in each case exceeds not only the ready funds of the purchaser but is so great that a term of years will reasonably be required to pay it. It is desirable that title be acquired promptly. How can the purchaser raise the money? Despite the admonitions of Polonius, all three turn instinctively to borrowing. The natural person, being of legal age and sound mind, is confronted by only one substantial obstacle. He must find a complacent creditor, and thereafter the legal formalities rarely require the services of counsel. He has the legal power (1) to acquire the lot and build the house; (2) to borrow money for that purpose; (3) to issue his negotiable promise to pay as evidence of the debt. In America, at least, the private corporation is scarcely aware of the possibility that there was ever a doubt of its legal capacity to acquire the improvements and contract the debt. Should the desired method of evidencing the latter take the form of whatever the constitution of California means by "bonds" and "bonded indebtedness",¹ the corporation is bound only to follow the form provided in a single code section² which has presented difficulties to the higher courts only upon most infrequent occasions.

The happy lot of our first two friends may well be envied by the city. Generally speaking, it has no implied power to acquire the improvement. Even if it has express power to acquire the improvement, it has no implied power to borrow the money. Even though it has an express authority to borrow the money, it has no implied power to issue negotiable securities or "bonds" therefor. Even where it has authority to issue bonds,

¹ Art. XII, sec. 11.

² Cal. Civ. Code § 359.

the authority falls within the rule that "the mode is the measure of the power."

These four principles form the background for any detailed study of the statutes and decisions affecting the issuance of city bonds. The first belongs to the general subject of municipal powers; the balance to our particular subject.

The contemporary financier asks the question: "Assuming the city to be endowed by the sovereign with personality, with the express power to get the improvement, why is not the power to borrow inherent or implied, and why if borrowing is permitted cannot it take the form which common experience finds most convenient in ordinary business life?" Judge Dillon gives him the strongest reasons why not.³ If the inquirer is a practical person he had best be convinced by the Judge's reasoning because it is most assuredly the law. It is true that when he reads the language that "there is no resemblance between private and public or municipal corporations in this regard. The latter are simply agencies of government. They are not organized for trading, commercial or business purposes",⁴ then turns to the charter of the City of Los Angeles and finds that city empowered among other things to engage in the enterprises of transportation, telephone, "terminal facilities, water, light, heat, power, refrigeration, storage, or any other public service",⁵ and to "acquire, own, hold, sell, deal in, manage, operate or control any office, department, business, utility or property, which might or could be acquired, owned, held, sold, dealt in, managed, operated or controlled by any person, firm, or corporation whatever",⁶ he may feel his perception of the classic argument against the municipal power not crystal clear. If, however, he looks into the story of how cities formerly exercised less restricted borrowing powers in flush times, and what befell the taxpayers as well as creditors thereof in long continued dull times, and concludes that the thought in the minds of judges and constitution makers alike has really been that cities still partake of the characteristics of John Younghusband before he became of age and

³ No implied power to borrow. Dillon, *Municipal Corporations* (5th ed.) § 278 *et seq.*

No implied power to issue negotiable bonds. Dillon *Municipal Corporations* (5th ed.) § 872, *et seq.*

⁴ § 872.

⁵ Charter of Los Angeles, Art. I, § 2 (7).

⁶ Charter of Los Angeles, Art. I, § 2 (50).

married, he comes out nevertheless with a strong hesitation to criticise the rules stated by Judge Dillon.

CONSTITUTIONAL PROVISIONS.

The constitution of 1849 confined itself to recognizing the dangers involved in municipal borrowing and bidding the legislature look to the subject.⁷

The constitution of 1879 laid down express limitations on the power. Aside from an immaterial change in phraseology, the extension in 1892 of the maximum term from twenty to forty years, and the addition of exceptions to the rules applicable to certain specified bond issues, the main section stands as originally adopted. The important section is Article XI, Section 18. It imposes limitations upon certain public corporations only, viz., counties, cities and towns, and school districts.⁸

It does not purport to restrict all bonded indebtedness of cities, but only bonded indebtedness of a size "exceeding in any year the income and revenue provided for such year."⁹

It does not limit the funding of pre-existing indebtedness.¹⁰

Its limitations are three:

⁷ Art. IV, § 37.

⁸ County irrigation districts, for example, are not covered by this section. *Bliss v. Hamilton* (1915) 171 Cal. 123, 132, 152 Pac. 303, 307; nor are ordinary irrigation districts, *In Re Madera Irrigation District* (1891) 92 Cal. 296, 342, 27 Pac. 666, 25 Am. St. Rep. 186; nor is a flood control district organized by special act. *Los Angeles County Flood Control District v. Hamilton* (Dec. 31, 1917) 55 Cal. Dec. 115, 169 Pac. 1028. The law regulating the issuance of bonds of such districts frequently imposes limitations similar to those of the constitution. In such cases the legislature may by validating act waive the requirements it has imposed. *Los Angeles County Flood Control District v. Hamilton*, *supra*. This it could not do if the constitutional provisions were applicable.

⁹ For present practical purposes the constitutional limitations do affect all city bond issues because the only issues permitted by the legislature under the Municipal Bond Act of 1901 are those where the estimated cost of the proposed improvement is too great to be paid out of the ordinary annual income and revenue of the city.

¹⁰ Because it is held that no new indebtedness is created thereby within the meaning of the constitution. *City of Los Angeles v. Teed* (1896) 112 Cal. 319, 326, 44 Pac. 580, 582. Although the court states that the record does not show when the original indebtedness was incurred the opinion discusses the possibility of a constitution or statute prohibiting or making impracticable the funding of debts by new issues of bonds and doubts the existence of the power; "in a majority of cases, the only way in which municipalities can pay their debts is by issuing funded bonds."

The recent case of *City of Long Beach v. Lisenby* (In Bank, Feb. 26, 1919) 57 Cal. Dec. 247, throws great additional light on this constitutional provision. By virtue of Cal. Stats. 1897, p. 75, the legislative body can, by its two-thirds vote, issue bonds to fund judgments against

(1) The issuance of bonds must receive the assent of two-thirds of the qualified electors of the city voting at an election to be held for that purpose.

This language seems to be construed with strictness but not with severity. The total of electors of which two-thirds must assent is not the number registered, but the number voting at the election. Of registered electors casting ballots, it has been said that those whose ballots are properly rejected do not count in making up the total.¹¹

If two or more bond propositions are submitted at the same election, it is not enough that a proposition receives the affirmative two-thirds vote of those who vote either for or against that proposition, but it must receive the two-thirds vote of all voting at the election. Thus, on Proposition I the vote stands Yes 200, No 50, and on Proposition II, Yes 150, No 300. Both fail to carry, for 450 is the number of voters voting at the election and 300 affirmative votes are required.¹²

the city aggregating more than \$370,000 arising out of actions for death and personal injuries due to negligence. "This of course, they could not do as to such of the contractual obligations as would come within the inhibition of § 18."

¹¹ State v. Clausen (1913) 72 Wash. 409, 130 Pac. 479. See City of Inglewood v. Kew (1913) 21 Cal. App. 611, 132 Pac. 780. See also People v. Sausalito (1895) 106 Cal. 500, 39 Pac. 907. The theory seems to be that ballots which are properly rejected are "mere blanks, not to be counted for any purpose". Many may, however, view with sympathy the dissent of the Chief Justice in the Washington case. The opinion on this point in the Inglewood case seems to be *dictum* inasmuch as the bonds were held invalid on other grounds. In the Sausalito and other like cases no constitutional provision was involved and a more easy going canon of construction may be permissible. Some at least of the ballots which the court in the Inglewood case held to have been properly rejected would seem to have been good under the rule laid down in Turner v. Wilson (1915) 171 Cal. 600, 154 Pac. 2. The main question seems still an open one in California with the likelihood that ballots properly rejected will be held not to count even in making the total. For obvious reasons, however, no careful attorney will feel safe in approving a bond issue where the canvassed affirmative votes do not equal two-thirds of the number of persons purporting to cast ballots as shown by the poll lists.

¹² Law v. San Francisco (1904) 144 Cal. 384, 394, 77 Pac. 1014, 1018; (Judge Henshaw's words to the effect that the decision is based upon the terms of the charter are evidently unmindful of the existence of the constitutional limitation); Long Beach v. Boynton (1911) 17 Cal. App. 290, 119 Pac. 677. Cf. also, Santa Rosa v. Bower (1904) 142 Cal. 299, 75 Pac. 829; People v. Town of Berkeley (1894) 102 Cal. 298, 36 Pac. 591. Beware of reliance on City of Hanford v. Williams, (1914) 23 Cal. App. 668, 139 Pac. 224. The court refused to pass on the validity of seven disputed ballots (four of which were for the bonds and three against), because the affirmative votes were two-thirds of the total undisputed ballots. The court forgot, however, to count these seven as part of the total. If one adds the total of seven disputed

A puzzling question is presented by the clause "voting at an election to be held for that purpose." This may mean either of two things. First, that not all the qualified electors count in estimating the total, but only such as vote at the election. If this is correct the words "to be held for that purpose" are surplusage. Second, that in order to afford the fullest consideration for this early form of referendum, the question of bonded indebtedness must be submitted at an election where neither offices nor other questions are to be voted upon. Earlier legislation seems to have inclined to the latter interpretation and up to 1915 the municipal bond act forbade the submission of other questions. An amendment now permits it,¹³ and the decision in *Howland v. Board of Supervisors* seems to support it¹⁴ though the matter cannot conservatively be said to be beyond argument.¹⁵

(2) The second limitation is that before, or concurrently with, the incurring of the indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest as it falls due, and also provision to constitute a sinking fund for the payment of principal on or before maturity. As substantially all city bonds are payable in equal annual installments, no special reference need be made to the sinking fund provision, as each year's tax cares not only for interest, but also for an aliquot part of the bonds. This clause can hardly prove a pitfall in any case because it has been held that the "provision" can be made by legislative enactment and the general municipal bond act provides that the legislative body of the city must levy the

ballots to the total of undisputed ballots, it appears that the bonds lost by one vote.

¹³ Section 123½ added to the Municipal Bond Act of 1901 by Cal. Stats. 1915, p. 98 and p. 1454.

¹⁴ (1895) 109 Cal. 152, 41 Pac. 864. Here the bond proposition was voted upon on the same day and at the same places as the offices and propositions of the general election. The decision goes upon the theory that these were in substance two elections, the general election and the special one, that only the voters who voted yes or no on the bond proposition are to be deemed as voting at the special election. In *Law v. San Francisco*, supra n. 12, however, Judge Henshaw in discussing the *Howland* case with approval states that only one ballot was used. Cf. also *Belknap v. Louisville* (1896) 99 Ky. 474, 36 S. W. 1118, overruled on other grounds in *Montgomery County v. Trimble* (1898) 104 Ky. 629, 47 S. W. 773.

¹⁵ Cf. the argument in the dissenting opinion in *Belknap v. Louisville*, supra, n. 14, and in *San Diego v. Potter*, infra, n. 26, on the subject of the submission of an illegal bond proposition along with good ones.

required taxes, which is sufficient compliance with the constitution.¹⁶

(3) The third limitation is that the final maturity of the indebtedness shall not exceed forty years from the time of contracting the same. By some miracle no city seems to have given occasion for this clause to receive judicial construction. "The time of contracting the indebtedness", as used in this and the preceding limitation, as well as in the statutes, refers not to any of the preliminary steps in the proceedings, nor to the date of the bonds, but to the time when they are delivered to the purchaser.¹⁷ The bonds should of course bear a date prior to the date of delivery and should mature not more than forty years from the date they bear; so that in practice they should fall a little inside the constitutional requirement.

Any bonds issued contrary to the constitutional limitation are declared to be void.

The next constitutional provisions substantially to affect our municipal bond law were sections 13 and 16 of Article XI, respectively, the former providing against the delegation to any special commission or private person of the power to control or in any way interfere with any county, city, or municipal improvement, money, or property, or perform any municipal function, and the latter requiring all county or city moneys coming into the hands of any officer thereof to be immediately deposited with the treasurer. Two of the principal desiderata of investors in the late '80's and early '90's seem to have been a provision that payments of bonds should be made in gold coin rather than lawful money, and in some eastern financial center rather than

¹⁶ *Howland v. Board of Supervisors*, *supra*, n. 14. A gap owing to the fact that the first annual tax levy will not produce funds in time to take care of the first maturities is not obnoxious to the constitution. *Jenkins v. Williams* (1910) 14 Cal. App. 89, 111 Pac. 116. Where the legislative body had taken the preliminary steps to issue bonds but the bonds were unsold at the time of making the annual tax levy it was formerly customary to levy the bond tax anyway in order to care for payments when the bonds should be sold. This practice is forbidden by the case of *Connelly v. San Francisco* (1912) 164 Cal. 101, 127 Pac. 834. The same point was raised in *Skinner v. Santa Rosa* (1895) 107 Cal. 464, 127 Pac. 834, but not discussed. The purchaser, therefore, must always take care as to what practical provision exists for paying his first maturing bonds and coupons.

¹⁷ *Clark v. Los Angeles* (1911) 160 Cal. 30, 116 Pac. 722. *Moreing v. Shields* (1915) 28 Cal. App. 513, 516, 152 Pac. 964, 965; *O'Neill v. Yellowstone Irrigation District* (1912) 44 Mont. 492, 121 Pac. 283.

at the city treasury.¹⁸ The legislature in 1893 sought to permit this result to be accomplished and let bonds be made payable either in gold coin or lawful money and at New York, Chicago, Boston or San Francisco.¹⁹ Pursuant to this statute the city of Los Angeles attempted to make certain bonds and the interest thereon payable at the Chemical Bank in New York. The court, in the case of *City of Los Angeles v. Teed*, *supra*, held this position of that statute to be unconstitutional, arguing that the result of eastern payment could be accomplished in only two ways; either the city treasurer must carry the funds there twice a year, or he must remit to the fiscal agent bank and authorize it to pay. There was no authority for the treasurer to travel outside California, and it was doubtful if it could be given. The alternative of having the bank act as fiscal agent for the city was clearly forbidden by the constitutional sections.

In course of time the practical expediency of having bonds payable in eastern cities became so apparent that in 1906 a new section (No. 13½) was adopted providing in substance that nothing in the constitution should be construed as preventing a public corporation from making its bonds payable anywhere in the United States. As a practical matter the adoption of this section did not have the results expected. Cities were no longer prohibited from having outside fiscal agents, but they still (with the exception of a few far-sighted chartered cities which happened to be amending their charters) had no affirmative power to use the foreign instrumentalities. Even on the assumption that an amendment to the municipal bond act authorizing the issuing body to fix the place or places of payment supplied the lack in most cities, there were a large number of chartered cities, with charter provisions inserted during a period of eighteen years to avoid the snares of the *Teed* case, who had no such powers. Accordingly, in 1914, section 13½ was amended to give all public corporations issuing bonds under the laws of California, authority and power, first, to make the principal and interest payable anywhere; second, to make the principal and interest payable in any money, domestic or foreign. This amendment fills all gaps insofar as affirmative power is concerned.²⁰

¹⁸ See *Skinner v. Santa Rosa*, *supra*, n. 16, for an example of the practical effect the change in coinage and place of payment made in obtaining bids.

¹⁹ Cal. Stats. 1893, p. 59.

²⁰ Interesting questions remain undecided. Section 18 of the same

OBSOLETE GENERAL BOND ACTS.

Subsequent to the adoption of the constitution of 1879, the legislature passed several general acts relating to municipal bonds. These are of more than historic importance for several reasons. They are substantially similar in frame work to the present Municipal Bond Act of 1901, and as they have been the source of important litigation these decisions throw light on mooted points in connection with the current act.

The Act of 1887²¹ laid down a scheme for cities incurring bonded indebtedness for permanent municipal improvements. The legislative body by ordinance passed by three-fourths of its members, and approved by its executive, was to determine the public necessity of the improvement. At the next regular or adjourned meeting after the publication of the ordinance was complete, by similar vote and approval, it could adopt an ordinance calling the bond election, at which none but bond questions could be submitted. The ordinance was required to state divers essentials regarding the issue: (1) its objects and purposes, (2) the estimated cost of the improvement, (3) the necessity for the improvement, (4) a statement that the bonds would be issued if voted, and (5) the date and manner of holding of the election. In addition to the publication of the ordinance and following such publication, there had to be pub-

article still provides for the assent of two-thirds of the qualified voters to the bond issue. The voters now vote on the basis of the terms of an ordinance calling the election. Suppose the ordinance calling the election provides that the bonds shall be issued in form providing that they shall be payable at the city treasury only and in any kind of lawful money existing at the date of maturity. Would the city's legislative body after an assent so given have authority to issue bonds payable either at the office of the city treasurer or at the National City Bank in New York, at the option of the holder, in gold coin of the present standard of weight and fineness? It is submitted that the answer is no. It is possible that the new section is annunciatory of a state policy to the effect that the legislative issuing body is to have unhampered discretion in these details. The grant of power, however, is to the public corporation, not merely to its legislative body, and under section 18, the assent of two-thirds of the voters is a *sine qua non*. Section 13½, therefore, gives the authority to the issuing body only by and with the assent of the required per cent of electors. On the other hand, it is at least doubtful whether by charter or legislative act the city can be restricted from issuing bonds in the manner provided in section 13½. The answer will turn upon whether the section is permissive only, or whether in the light of its history and language it be construed as the sovereign's announcement that public corporations are to have at the time of voting for and issuing bonds the untrammelled right to make them payable where and how they please.

²¹ Cal. Stats. 1887, p. 120.

lished for two weeks a notice of election, stating (1) notice of election, (2) purpose of bonds, (3) amount of indebtedness, (4) number and character of bonds, (5) rate of interest, and (6) amount of tax levy. If the bonds obtained the requisite two-thirds vote, the legislative body could issue them as serials for a term of twenty years (which was then the constitutional limitation), one-twentieth payable each year in denominations of \$100 to \$1000 at not more than 5% interest²² with broad discretionary powers as to sale at not less than par. In order to comply with the constitutional provisions, the legislative body was ordered to levy the necessary annual tax.²³

The Act of 1889²⁴ provided that the legislative body must have in the first instance plans and estimates of the proposed improvement. The ordinance determining the public interest and necessity was substantially the same as in the Act of 1887 except here as in the ordinance calling the election, the three-fourths vote was reduced to two-thirds. In sixth class cities with a legislative body consisting of five trustees the change seems immaterial. Four was necessary in either case. The notice of the election was slightly simplified by omission of the amount of indebtedness. Amount of all indebtedness was limited to five per cent of the assessed valuation of property, a valuable rule to prevent cities impairing their credit. Interest was limited to seven per cent. Bonds could be made payable at the city treasury, or at any bank in San Francisco, Chicago, New York or Boston. Definite provisions for formalities of execution were inserted. The usual order

²² Raised to seven per cent by Cal. Stats. 1889, p. 14.

²³ Section 10 contained a broad repealing clause. It is not certain just what acts were covered by it. The municipal corporation bill made special provision for issues by cities of various classes, (e. g. second class, § 329; third class, § 528; fifth class, § 768; sixth class, § 866). The two latter were expressly repealed in 1913. No preliminary resolution or ordinance of public necessity was required. The procedure was quite simple. In *Redlands v. Brook*, (1907) 151 Cal. 474, 91 Pac. 150, the question whether these sections were still in force was left undecided. They seem seldom, if ever, to have been used in practice since 1901, possibly because of the twenty year limitation on the bonds.

Political Code sections 4445 *et seq.* relating to refunding seem to be still in effect and are not limited to cities organized under the Political Code, See *Los Angeles v. Teed*, *supra*, n. 10. Inasmuch, however, as bonds issued since 1879 have had to have provision at the time of issue for the means of payment, refunding of bonded indebtedness is practically obsolete.

The recent case of *Long Beach v. Lisenby*, *supra*, n. 10, illustrates, however, a current case of bond funding to care for an extraordinary tort liability reduced to judgment.

²⁴ Cal. Stats. 1889, p. 399.

for the levy of annual taxes was made. In 1893²⁵ the act was amended to provide that the bonds could be made payable in gold coin or lawful money and that the interest could be made payable annually or semi-annually.

THE MUNICIPAL BOND ACT OF 1901.

Molded on these predecessors, the act of 1901, though amended in divers particulars, has, for eighteen years, set forth the usual method of issuing the great bulk of California city bonds.²⁶

Sections 1 to 7 include the successive steps for issuing bonds. The first section states that any city "may as hereinafter provided incur indebtedness to pay the cost of any municipal improvement requiring an expenditure greater than the amount allowed for such improvement by the annual tax levy." The second section provides that when the legislative branch shall by a certain resolution determine that public interest or necessity demands the acquisition, construction, or completion of any municipal improvement, the cost of which will be too great to be paid out of the ordinary annual income and revenue of the municipality, it may at any subsequent meeting order the submission of the bond question at an election. The phrase "municipal improvement" is defined in section 2 as including bridges, waterworks, sewers, light and power works, wharves, school-houses, street work, and divers others specifically enumerated, as well as those included in the catch-all, "or other works, property or structures, necessary or convenient to carry out the objects, purposes and powers of the municipality."²⁷

This apparently broad scope of authority may well mislead the unwary. The act says that any city can incur indebtedness for street work, and issue bonds representing the indebtedness.

²⁵ Cal. Stats. 1893, p. 61.

²⁶ Cal. Stats. 1901, p. 27, (Deering, Gen. Laws, Act 2371). The Act, however, is not to be construed as the exclusive mode. For example, bonds may also be issued for parks under a separate act, *Oakland v. Thompson* (1907) 151 Cal. 572, 93 Pac. 283; *San Diego v. Potter* (1908) 153 Cal. 288, 95 Pac. 146, and for assembly or convention halls under Cal. Stats. 1903, p. 412. Proceedings for bonds which may be taken under more than one statute may prove puzzling unless they show clearly under what authority they are taken or unless the draftsman molds them to meet the requirements of both statutes. The latter course is generally both feasible and safer.

²⁷ The cases given in section 2 are not so much illustrative as intended to solve specific doubts, and not to be interpreted by the rule *noscitur a sociis* nor by *inclusio unius exclusio alterius*. *Oakland v. Thompson*, *supra*, n. 26.

We have seen above, however, that the city must show authority to do three things, (1) get the improvement, (2) incur an indebtedness for it, and (3) issue bonds therefor. Does the act supply this triple power? On the surface, yes,—in substance, no. The city must have been granted *aliunde* the power to acquire the improvement. Only if such power has been granted does this act give authority to incur an indebtedness and issue bonds therefor.²⁸

It is therefore of fundamental importance before commencing proceedings to seek elsewhere either in the municipal corporation law, in the charter, or in some other general law for the authority to acquire the particular improvement desired.

The bond issuing authority is furthermore limited to acquisition, construction and completion of improvements. Bonded indebtedness cannot be incurred for the repair of an existing improvement,²⁹ though the line between completion of a bridge half washed away, and the plain repair of half a bridge, will sometimes be dim to the eye of the casual layman; ritualistic adherence to the statutory language may, however, permit the city to attain its desire and still avert an adverse decision. The act means that cities may cast the burden of getting improvements upon the future, but what they have gotten they must maintain out of current funds.

Next note that bonded indebtedness cannot be incurred for all improvements. The cost must exceed by section 1 "the amount allowed for such improvement by the annual tax levy" This modest limitation is made more stringent by the requirement in section 2 that the estimated cost must be "too great to be paid out of the ordinary annual income and revenue of the municipality."³⁰

²⁸ *Redondo Beach v. Cate* (1902) 136 Cal. 146, 68 Pac. 586, (interpreting the act of 1889 but with an argument equally applicable to this act and so considered in *San Diego v. Potter*, supra, n. 26); *Long Beach v. Lisenby* (1917) 175 Cal. 575, 166 Pac. 333.

²⁹ See concurring opinion in *Long Beach v. Boynton*, supra, n. 12. But cf. *Johnson v. Williams* (1908) 153 Cal. 368, 95 Pac. 655, (County bonds).

³⁰ The reason for the second limitation is somewhat obscure. It suggests the constitutional phrase "indebtedness . . . exceeding in any year the income and revenue provided for such year". In the constitution no limits are placed on indebtedness of an amount less than this. In the bond act no bonded debt can be incurred unless of an amount such as to exceed this. Probably the legislature intended to prevent the use of the borrowing power in cases of minor and inexpensive improvements. The procedure would be much simpler, however, if the minimum

Can bonded indebtedness be incurred under the act for anything except a municipal improvement? The answer is "no". What then is a municipal improvement? The clause is broad enough to cover a lot with a municipal building thereon and a fire engine and hose. Although "improvement" is no longer modified by "permanent" as it was in the Act of 1887, it seems clear that only items of a comparatively nonconsumable nature are included. Probably fire apparatus marks the outside limit. How improved or to what degree finished must the improvement be? Very raw land would do for a scenic park, but it is highly questionable whether a vacant lot intended at a later indefinite date for use as a building site would be covered. It is submitted that the criterion is whether the object sought to be acquired will, when the bond moneys have been expended therefor or thereon, in its then form constitute a permanent finished product adapted for municipal use.³¹

In examining the procedural requirements stated in the act one must bear in mind their substantive potency because of the rule that "the mode is the measure of the power." It should also be noted that the act purports to set forth a single, separate and entire scheme for incurring bonded indebtedness.³²

(1) THE RESOLUTION OF PUBLIC NECESSITY.

The first procedural step is the adoption by the legislative body of the city of a resolution determining that public interest or necessity requires the acquisition, construction or completion

restrictions were omitted altogether, and the matter might safely be left to the discretion of the legislative body and the electors.

³¹ No highly detailed plan for the improvement is required. *Clark v. Los Angeles*, (1911) 160 Cal. 30, 42, 116 Pac. 722, 726. In *Santa Barbara v. Davis* (1904) 142 Cal. 669, 76 Pac. 495, it was held that a chartered city with power to acquire land for city purposes could out of general funds purchase land intended to be improved later, even though no provision was yet made for improving it. The unexpressed or secret intent and motive of the legislative body regarding the improvement is immaterial. *Clark v. Los Angeles*, *supra*. A reasonably definite picture is all the elector can require.

³² Thus formalities for the adoption of ordinances generally do not apply to the ordinance calling the election which is specifically described in the bond act. *Derby v. Modesto* (1894) 104 Cal. 515, 38 Pac. 900, (construing the act of 1889 but with reasoning still pertinent); and the details as to printing of ordinance set forth in Political Code section 4459, do not apply to said ordinance. *Clark v. Los Angeles*, *supra*, n. 31. But if a city charter lays down other or different requirements than the bond act they must not be departed from, for the issuance of bonds seems generally to be a municipal affair. *Fritz v. San Francisco*, (1901) 132 Cal. 373, 64 Pac. 566. See also *Law v. San Francisco*, *supra*, n. 12.

of the improvement.³³ This requirement of an initial resolution, which generally makes no reference to bonds, is solely statutory. It is not found in all of the earlier legislation and is probably due solely to abundant caution on the part of the legislature, which has thus required at least a brief period of reflection between the beginning of proceedings and the decision to submit the proposition to the electors. The resolution must originate with the legislative body. It must determine that the public interest or necessity requires the acquisition, construction or completion of the object. It should describe the improvement in sufficient detail to form a reasonably accurate picture in the mind of the voter; but prolixity should be avoided both on account of the fact that the purpose stated in the resolution must be used throughout the proceedings and because the longer the description the greater the likelihood of a fatal variance. The matter proves also of practical importance in assuming responsibility for the use of the bond moneys which must be applied only to the stated purposes.³⁴

The purpose stated must be "a single purpose". This principle has caused considerable confusion and difficulty. The theory is that the voters must be given the right to say "Yes" or "No" to a specific proposition and not to a hodge-podge of elements appealing in divers forms to divers minds. Thus a proposition for acquiring bridges, highways, a poor-house and a hospital is not a single purpose.³⁵ On the other hand, the voter cannot demand that the proposition be submitted in as specific form as he might like. Thus two wagon roads if there is some reasonable ground for treating them as an entirety may be described as a single purpose.³⁶ A series of isolated parks can be treated as an integral park system and submitted as one proposition.³⁷ The same is true of a number of separate wharves, all forming parcels of the improvement of the water front.³⁸

³³ "Acquisition" is broad enough to cover either purchase or construction and pretty surely completion. *Hartigan v. Los Angeles* (1915) 170 Cal. 313, 320, 149 Pac. 590. It is generally safe practice to use the phrase "acquisition, construction, and completion."

³⁴ *Jenkins v. Williams* (1910) 14 Cal. App. 89, 116 Pac. 116.

³⁵ *People v. Baker* (1890) 83 Cal. 149, 23 Pac. 364, 1112.

³⁶ *People v. Counts* (1891) 89 Cal. 15, 26 Pac. 612.

³⁷ *Oakland v. Thompson* *supra*, n. 26.

³⁸ *Clark v. Manhattan Beach* (1917) 175 Cal. 637, 166 Pac. 806. The following cases should also be examined in connection with drawing this practically difficult line; *Hartigan v. Los Angeles* *supra*; *Cary v. Blodgett* (1909) 10 Cal. App. 463, 102 Pac. 668; *Clark v. Los Angeles*

The resolution must find that the estimated cost of the improvement is too great to be paid out of the ordinary annual income and revenue of the city. This finding must be explicit.³⁹

The finding as to cost involves the making of an estimate of the cost. The later provisions of the act make it reasonably clear that (unlike the situation under at least one of the earlier acts) no great precision is required as in the case of certain other forms of improvement proceedings. An honest though rough-and-ready estimate is enough, or, in formalistic verbiage, where the resolution determines the estimated cost at a certain number of dollars and that such cost is and will be too great to be paid out of the ordinary annual income and revenue, the prior making of a sufficient estimate is presumed.⁴⁰ The resolution should always, however, find the estimated cost in dollars and then make the other findings with reference to its exceeding the specified income and revenue. Apparently the estimated cost may exceed the amount of the bond issue.⁴¹ It is highly doubtful if the converse is true.

The resolution must be adopted by two-thirds vote of all the legislative body.⁴²

Many old-fashioned practitioners, probably on account of the fact that an ordinance was originally required, follow the prac-

(1911) 160 Cal. 317, 116 Pac. 966; *Clark v. Los Angeles* (1911) 160 Cal. 30, 116 Pac. 722.

³⁹ The statutory requirement has been held to be substantially different from (though smaller than) a charter requirement that bonds can only be issued in the event that the contemplated cost, in addition to the other expenditures of the city, will exceed the income and revenue provided for in any one year. *Long Beach v. Boynton*, *supra*, n. 12. Though the courts for brevity sometimes use "income" and "revenue" interchangeably they are not synonymous. "Revenue" refers to public funds obtained from the taxing and licensing powers, while "income" includes items collected from other sources. See 1 *Dillon, Mun. Corp.* (5th ed.) § 210, p. 415; *Lamar etc. Company v. Lamar* (1894) 26 S. W. 1025, 31 S. W. 756.

⁴⁰ *Clark v. Los Angeles* (1911) 160 Cal. 30, 43, 116 Pac. 722; *Inglewood v. Kew*, *supra*, n. 11.

⁴¹ *Oxnard v. Bellah* (1913) 21 Cal. App. 33, 130 Pac. 701.

⁴² The requirement of approval by the executive of the resolution and of the ordinance calling the election was fortunately made obsolete by Cal. Stats. 1913, p. 12, adopted in order not to interfere with the cities operating under the commission plan where it was doubtful who was the "executive". Prior thereto in sixth class cities the president of the board of trustees was the "executive", *Redondo v. Barkley* (1907) 151 Cal. 176, 90 Pac. 452. Until an amendment of § 875 of the Municipal Corporation Bill (Cal Stats. 1913, p. 15) which enlarged the powers of the president *pro tem.*, sixth class cities were, in the absence or during the disability of the president, greatly hampered in respect of approval of resolutions and ordinances. Cf. *Dillon, Mun. Corp.* (5th ed.) § 578, note.

tice of publishing this resolution, but this is not required under the act of 1901.

(2) ORDINANCE CALLING THE ELECTION.

The second step is the adoption by two-thirds of the legislative body of the ordinance calling the bond election and submitting the proposition to the electors.⁴³ It may be adopted at any meeting subsequent to the passage of the resolution of determination.⁴⁴ This ordinance not only calls the election, but when properly published constitutes the notice thereof. It must therefore contain all of the matters provided to be included by the act. These are set forth in the act in honest English and need no special elucidation.⁴⁵

It is wise practice not to insert a mass of detail in addition to the matters required by the act, such as the denominations, dates of maturity, places of payment, or method of sale. When it comes time to issue the bonds the legislative body is intended to have, and should have, a free hand in such matters. If it inserts these provisions in the ordinance it is bound to follow them in all material matters as the assent of the electors was given on the conditions stated and not otherwise.⁴⁶ It is, however, wise in the present condition of the authorities, to state specifically in this ordinance whether the bonds and coupons are to

⁴³ The proper form is to submit the proposition of incurring the specified bonded indebtedness to the qualified electors of the city. A submission to "the people" is, however, a substantial though inartistic compliance. *People v. Counts*, *supra*, n. 36.

⁴⁴ *Redondo v. Barkley*, *supra*, n. 42 holding that it is immaterial whether the subsequent meeting is an adjourned meeting of the original meeting or the next regular stated meeting.

⁴⁵ Among other required matters the ordinance must set forth the manner of holding the election and the voting for or against the bonds, and in all particulars not recited in the ordinance the general laws governing municipal elections control. Such provisions of the ordinance have, therefore, the full force of statutes. *Inglewood v. Kew*, *supra*, n. 11. So also where the ordinance required that the voters write "Yes" or "No" after the proposition on the ballot, the votes of the great majority who stamped a cross after the printed words "Yes" or "No" were rejected. *Murphy v. San Luis Obispo* (1898) 119 Cal. 624, 632, 51 Pac. 1085. Inasmuch as most officers and voters will instinctively follow the current methods used at general elections such provisions as are inserted in the ordinance on the subject should follow as nearly as practicable the provisions of the Political Code. See also the comment on fixing the date of canvassing returns under (5) Canvass.

⁴⁶ *Skinner v. Santa Rosa*, *supra*, n. 16. But a variance in denominations, as not imposing any different or greater burden, is immaterial. See *infra*, n. 57.

be issued payable in lawful money or in gold coin.⁴⁷ The ballot, which should be provided for in detail in the ordinance calling the election, is said to require a statement in the proposition of the amount of the bonded indebtedness, though why this is so is not apparent from the statutes.⁴⁸ Precincts, polling places and officers of election should be stated in the ordinance.

Where several bond propositions are to be submitted at the same election, it should be remembered throughout the preparation of proceedings that some may carry and some may fail. In all such cases both in the initial resolution and in the ordinance all of the findings and determinations should be made separately as to each proposition and all of such matters as estimated costs, amount of principal of indebtedness, and objects and purposes should be separately stated as to each proposition. Rate of interest, coinage, and manner of holding the election and voting may by appropriate phrases be described in general language appropriate to all the propositions that carry at the election, and all bonds that carry may thereafter be lumped in one issue.⁴⁹

(3) PUBLICATION OF NOTICE.

The third essential step is the publication of the ordinance either in a daily paper or a weekly paper. Most problems seem to have arisen in connection with publication in a weekly paper, where the required publication is "once a week for two weeks

⁴⁷ Whether, when the statutes are silent, the legislative body has the implied power to issue bonds payable in gold coin rather than lawful money, must be deemed an open question. The supreme court avoided uttering *dictum* upon it in *Derby v. Modesto*, supra, n. 32, (citing cases). The language of our supreme court in this and other early cases construing statutes on the subject is very puzzling and perhaps hyper-technical.

If the ordinance calling the election says nothing regarding the medium of payment some conservative attorneys insist that "lawful money" is intended and assented to, so cannot thereafter be departed from. The writer feels that at least since the adoption of new section 13½ of Article XI, the fairer presumption is that the voters intended to leave the full discretion to the legislative body. Safe practice, however, bids one state in the ordinance the kind of coinage desired both as to principal and interest, then to stick to it. The medium of payment is not now so important to the purchaser as it was in the '90s, so there is seldom practical difficulty in selling "lawful money" bonds, and this is the course most unanimously approved by attorneys where the ordinance is silent. The coinage question may, however, revive in interest among investment circles and "gold coin" bonds are never less desirable than their brethren of the "lawful money" type.

⁴⁸ *Clark v. Los Angeles* (1911) 160 Cal. 317, 320, 116 Pac. 966, 967.

⁴⁹ *Mill Valley v. House* (1904) 142 Cal. 698, 76 Pac. 658, which points out, however, that separate treasury funds for the respective improvements must be maintained.

. . . . and one insertion each week for two successive weeks shall be a sufficient publication. No other notice of said election need be given". Under the latter saving clauses, if publication be made on the 14th and 21st of the month, the election need not be delayed until the 29th, but can be held on or after the 22nd.⁵⁰ It seems that sample ballots need not be distributed, though the usual course and the preferable one, is to follow the Political Code sections regarding them.⁵¹

(4) CONDUCT OF ELECTION.

The fourth essential step is the holding of the election. Pertinent provisions of the Political Code vary so from time to time that no extended description is helpful. The election may be held on a holiday.⁵² For reasons given above, the special provisions of the ordinance should be carefully noted by election officials, and particular care given by them to filling out all matters in the returns as these will be subject in many cases to careful scrutiny if the vote is close.

(5) CANVASS.

The fifth essential step is the canvass of the returns by the legislative body. It may be doubted, in the light of the statute's silence on the subject, whether the holding of a canvass is a jurisdictional step. It is certainly an essential of orderly procedure, however, for the legislative body to determine in formal public fashion whether or not the contingency has happened upon which alone its power to issue bonds under the constitutional

⁵⁰ *City of Lindsay v. Mack* (1911) 160 Cal. 647, 117 Pac. 924. Were it not for the saving clauses the answer would apparently be otherwise. Cf. *Seccombe v. Roe* (1913) 22 Cal. App. 139, 133 Pac. 507.

⁵¹ *Effect of the Referendum*. In chartered cities it sometimes happens that special provisions regarding publication must be followed. Some charters also raise a troublesome difficulty in connection with their sections dealing with the referendum. These may provide for a referendum with a thirty day period elapsing before the ordinance becomes effective and neglect to except "ordinances calling or otherwise relating to an election". Apparently the proceedings are held up until this time elapses. Odd though it may seem that the voters may have the right to vote on whether or not a question shall be submitted to them, the supreme court considers it an open question. *Los Angeles Gas & Electric Corporation v. Los Angeles* (1912) 163 Cal. 621, 126 Pac. 594, and cases cited. In such cases it may not be necessary to allow thirty days to elapse from first publication and then publish further to comply with the statute regarding the notice of election. Even before the ordinance is effective as an ordinance it seems likely that it is good as a notice. See *Los Angeles v. Teed*, *supra*, n. 10.

⁵² *People v. Loyalton* (1905) 147 Cal. 774, 82 Pac. 620.

provision depends. On the question as to when it is to be held, neither law nor authority furnishes a sure compass. Some bond attorneys insist that the analogy of section 1278 of the Political Code should be followed and the canvass made on the first Monday after the election. Others prefer that the canvass be made at the first regular meeting of the legislative body after the election, or at a special meeting. It is wise, therefore, to provide in the ordinance calling the election as to the hour, date and place of holding the canvass, and if the date so selected follow the analogy of the said code section all examiners of the bond proceedings will then apparently be pleased.

(6) ORDINANCE OF ISSUE.

When it has been determined that the bonds have obtained the requisite number of votes, the board may proceed by legislative act, either ordinance or resolution, to provide the discretionary detail as to the issuance of the bonds. Here arises an important condition precedent, viz., the limitation of section 4 of the act that no city shall incur an indebtedness for public improvements which shall in the aggregate exceed fifteen per cent of the assessed value of all the real and personal property of such city. In applying this salutary limitation, it should be noted that the indebtedness covers not only bonded indebtedness, but all indebtedness of the city for public improvements. The Vrooman Act bonds and similar obligations are presumably not included because not direct indebtedness of the city, but only claims against special district funds. That only the principal of indebtedness and not the interest counts is fairly certain.⁵³ Not the date of election, but the date of sale and delivery is important in measuring the percentage.⁵⁴ The assessed value is probably that of property subject to taxation to pay principal and interest of the bonds, so operative property of public utility corporations that pay the constitutional tax under section 14 of Article XIII should not be included.

The legislative body at this point is allowed to act either by ordinance or resolution, the act making no specific direction. Prior to the constitutional amendment and statutes regarding the referendum, cities commonly used the resolution to save time, for

⁵³ *Carlson v. Helena* (1909) 39 Mont. 82, 102 Pac. 39.

⁵⁴ *Clark v. Los Angeles* (1911) 160 Cal. 30, 45, 116 Pac. 722, and cases cited.

the ordinance of issue, unlike the ordinance calling the election, is subject to all formalities prescribed by general law applicable to ordinances of the particular municipality. Since the adoption of the referendum provisions of the constitution, it has been held that all municipal legislative acts, (barring those specially excepted) must await the thirty days from adoption before becoming effective whether they be in the form of ordinances or resolutions.⁵⁵ It is an open question whether or not the ordinance of issue is strictly speaking a legislative act. The highly important discretionary powers exercised thereby and the general nature of their effect make it likely that it would be held legislative. No substantial practical advantage, therefore, inheres in the use of the resolution and the safer practice is to use the form of ordinance.

The following points should be given special attention in preparation of the ordinance of issue.

(a) *Maturities of the bonds.* The practically universal custom is to make an equal amount and number of bonds payable each year within the limitation of not exceeding forty years for the last maturities. In all bonds, except those for revenue producing utilities, the first annual installment must mature within one year. Must an equal amount of principal mature each year? In the case of bonds for the revenue producing utilities where the first maturity is deferred for over a year, the statute requires equal maturities. The only provision for the other varieties is that not less than one-fortieth mature each year. It has been held that within such limits the maturities may differ in amount.⁵⁶

(b) *Denominations.* Within the statutory limits of one hundred to one thousand dollars the legislative body has full discretion and even a change from the denominations stated in the ordinance calling the election is an immaterial variance.⁵⁷

⁵⁵ Chase v. Kalber (1915) 28 Cal. App. 561, 153 Pac. 397; Hopping v. Richmond (1915) 170 Cal. 605, 150 Pac. 977.

⁵⁶ Town of Calistoga v. Adams (March 11, 1918) 26 Cal. App. Dec. 536, 172 Pac. 624. The case was uncontested. It was not clear that this case will be universally followed. The fact that a reasonable division leaves an unequal amount for the final maturities seems immaterial. San Diego v. Potter, *supra*, n. 26.

⁵⁷ Santa Barbara v. Davis (1907) 6 Cal. App. 342, 92 Pac. 308; Derby v. Modesto (1894) 104 Cal. 515, 38 Pac. 900; Law v. San Francisco, *supra*, n. 12. For purposes of general marketability the thousand dollar denomination is easily favorite, and small denominations should not be issued except for good cause. Smaller denominations are generally treated on the exchanges as "baby bonds" not deliverable in performance of an order unless so specified.

(c) *Coinage*. The principles involved have already been stated. If the ordinance calling the election states lawful money, or gold coin, it should be followed; if it is silent it is safer to say lawful money, though some conservative attorneys will approve bonds issued calling for gold coin.

(d) *Interest*. For some reason not obvious the interest must be payable semi-annually, that is to say, in two equal parts each year, one-half a year apart, commencing with the date of the bonds.⁵⁸

(e) *Form of bonds and coupons*. This should be expressly set forth in the ordinance. Recitals of the regularity of the important steps in the issue add to the marketability of the security,⁵⁹ because these recitals tend to cure certain irregularities in the proceeding when the bonds come into the hands of a bona fide purchaser. Either in the form of the bond or elsewhere in the ordinance the date that the bonds are to bear must be fixed. This date, of course, should not be subsequent to the expected date of sale and delivery. Apparently the bonds can be antedated to a time even prior to the date of the election,⁶⁰ though obviously such a course might destroy the full value of the recitals. It has also been held that the date finally selected may differ from the date stated in the ordinance calling the election.⁶¹

(f) *Signatures*. The specific provisions of the statute must of course be followed. The persons signing must be acting officers at the time they actually sign;⁶² and if they are such, under the statute, it is immaterial that they are no longer such officers at the time of sale and delivery.⁶³ The miscellaneous stat-

⁵⁸ No such limitation applies in respect of school district bonds. If the city could find a purchaser on an annual interest basis its burden might well be smaller.

⁵⁹ See *Waite v. Santa Cruz* (1901) 184 U. S. 302, 314, 46 L. ed. 552, 22 Sup. Ct. 327, which also at page 304 gives a good form of such usual recitals.

⁶⁰ *Venice v. Lawrence* (1914) 24 Cal. App. 350, 141 Pac. 406.

⁶¹ *Oxnard v. Bellah*, supra, n. 41. In many instances such a variance is immaterial but it is not hard to suppose cases where the taxpayer could show that his interests were injuriously affected by the change.

⁶² See *Lehman v. San Diego* (1897) 27 C. C. A. 668, 83 Fed. 669. Should the ordinance passed, say, on April 1st fix the date of the bonds April 1st, and if thereafter new officers qualified before the bonds were ready for signature, the new officers should of course sign regardless of the discrepancy in date. See also on the general subject *O'Neill v. Yellowstone Irrigation District*, supra, n. 17.

⁶³ It is almost universally desirable to use lithographed or engraved signatures on the coupons. If this is to be done the authority should be given the officers either in the ordinance of issue or by resolution.

utory provisions regarding such matters as numbering and sealing should be precisely followed.

(g) *Provision for levy of tax.* As already noted the constitutional requirements are complied with by the terms of the statute itself. Custom approves of the insertion in the ordinance of specific provision for the levying of the taxes and it furnishes a safe guide for taxing officials who may overlook the statute.

(h) *Provision for bond funds.* At least for the convenience of taxing officers it is wise to provide specifically not only for the fund into which the tax revenue is placed, but separately for the fund or funds into which the moneys received from sale of the bonds shall be placed. Confusion may result unless the separate funds are respectively given a handy name or number.

(7) SALE OF BONDS.

The final step to which comes the legislative body, who have so far been successfully led, is the sale of the bonds. They may be sold by the legislative body as it determines, but for not less than par. By par is meant the face value plus interest accrued from the date the bonds bear until the date they are delivered.⁶⁴ Unless the board has limited its own powers by prescribing by ordinance the manner of sale, it may sell at public or private sale and with or without notice. Where the ordinances or charter prescribe the form of notice or manner of sale, that must be followed. As a matter of good business judgment the legislative body by resolution generally directs the clerk to advertise asking bids to be offered up to a given date and hour, but reserving the right to reject any and all bids, and requiring a deposit as evidence of the bidder's good faith conditioned on his performance of his offer if accepted. Such advertisements are closely followed by the bond houses and generally result in more and better bids being received than if no advertisement is made.

Where the sale is public and on notice, the legislative body should be met in regular, adjourned, or special session at the time of opening bids, and if the highest bid is satisfactory, should pass a resolution accepting such offer and directing the

⁶⁴ *Village of Fort Edward v. Fish* (1898) 156 N. Y. Supp. 363, 50 N. E. 973.

treasurer to deliver the bonds to the purchaser upon payment of the principal, accrued interest, and premium, if any.⁶⁵

The legislative body need not sell all of the bonds at one time; and where part of the money will not be needed for several months it is often good business to sell only a part. In so splitting the sale, however, care must be exercised to sell the part in series such that the part outstanding will comply as to maturities with the provisions of the statute and ordinances, for it may well happen that the balance will never be issued.

It is sincerely to be hoped that in due course of time the experience of cities in issuing and taxing for bonds may result in an increased confidence on the part of the legislature producing a radically simplified form of procedure. It is by no means clear, however, that such time has yet arrived.

Sayre Macneil.

Los Angeles, California.

⁶⁵ The customary form of bid will be conditioned upon the city's furnishing a certified copy of the proceedings such as to evidence to the satisfaction of the buyer's attorneys the validity of the bonds. This form of conditional bid is to be differentiated from the unconditional form where the buyer is presumably already satisfied with the regularity of the proceedings. Even where the bid is unconditional it seems highly questionable that the city can enforce the bargain if the bonds are in fact invalid. The value of the conditional bid is that the purchaser need not depend upon the decision of the higher courts that the bonds are good or bad, but can reject them in case of his attorney's honest and uncapricious doubt as to their validity. *San Antonio v. Rollins* (1910) 127 Tex. C. A. 1199, 127 S. W. 1166; *Great Falls v. Theis* (1897) 79 Fed. 943. For a more extreme doctrine see *Trowbridge v. New York* (1898) 24 Misc. Rep. 517, 53 N. Y. Supp. 616; *Coffin v. Portland* (1890) 43 Fed. 411; *Fort Edward v. Fish* (1895) 86 Hun. 548, 33 N. Y. Supp. 784. It is not settled whether the usual conditional bid is conditioned also upon the due incorporation of the issuing power, though it seems that the proper doctrine is that either *de jure* or *de facto* incorporation is essential to good bonds. *Metcalf v. Merritt* (1910) 14 Cal. App. 244, 111 Pac. 505, uses language against the applicability of the condition though it held the district was a good *de facto* district. *People v. Linda Vista Irrigation District* (1900) 128 Cal. 477, 485, 61 Pac. 86, holds that in any direct attack on the validity of bonds the organization of the issuing public corporation is open to question.